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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**ORIGINAL
FILE**

In the Matter of

The Use of N11 Codes and
Other Abbreviated Dialing
Arrangements

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CC Docket No. 92-105 ✓

REPLY COMMENTS OF COX ENTERPRISES, INC.

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TABLE OF CONTENTS

	SUMMARY	iii
I.	INTRODUCTION	1
II.	THE AVAILABILITY OF N11 CODES TO INFORMATION SERVICES PROVIDERS WILL BE BENEFICIAL TO THE INFORMATION SERVICES INDUSTRY AND TO CONSUMERS	3
	A. Use of N11 Codes Will Be Beneficial	3
	B. There Is No Substance to Claims of Potential Harm	6
	1. There Is Little Likelihood of Customer Confusion	6
	2. Other Purported Concerns Are Without Substance	8
	C. The Commission Has the Authority to Direct the Availability of N11 Codes	11
III.	ABSENT COMMISSION ACTION, TELEPHONE COMPANIES WILL CONTINUE TO MONOPOLIZE ABBREVIATED DIALING ARRANGEMENTS	12
	A. Telephone Companies Already Use and Plan to Use N11 Codes for Enhanced Services	12
	B. Telephone Company Use of N11 Codes Is Part of a Pattern of Monopolistic Behavior	16
IV.	MEANINGFUL ALTERNATIVES TO N11 CODES WILL NOT BE AVAILABLE FOR SEVERAL YEARS	19
	A. Existing Dialing Arrangements Do Not Meet the Same Needs as N11 Codes	20
	B. Other Proposed Abbreviated Dialing Arrangements Will Not Be Available in the Foreseeable Future	24
V.	OTHER PROPOSED USES OF N11 CODES WOULD NOT BE IN THE PUBLIC INTEREST	26

VI.	THE COMMISSION SHOULD REQUIRE FIRST-COME, FIRST-SERVED ASSIGNMENT FOR N11 CODES	34
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VII.	CONCLUSION	37
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Exhibit 1 Assignments of *XX Codes

Exhibit 2 Excerpts from Tariffs for 976 Service

SUMMARY

This proceeding gives the Commission an opportunity to make an underused numbering resource available to the information services industry. Thus, the Commission should affirm its tentative conclusion in the Notice and direct local exchange carriers ("LECs") to assign N11 codes to independent users. Directing LECs to make N11 codes available will serve the public interest by strengthening competition in information services and broadening the range of services available to the public. Permitting LECs to hoard N11 codes will serve only the LECs' private interests.

The availability of N11 codes serves the public interest because of the new opportunities they will provide to the information services industry. As the Commission has determined on many occasions, a robust information services industry benefits not the public interest. At the same time, claims of potential harm from the assignment of N11 codes are illusory. Customer confusion is no more likely than for any other new service, and is unlikely in any event to burden ratepayers or LECs. Moreover, the costs of N11 codes will be borne by their users, not the telephone companies and the availability of N11 codes will increase competition rather than hinder it. The concrete benefits of assigning N11 codes far outweigh these overblown claims of harm. Thus, the Commission should assert its plenary authority over numbering to direct LECs to make N11 codes available to information services providers.

The availability of N11 codes also will help prevent LEC dominance of information services. LECs already use N11 codes to provide enhanced services and have announced additional plans to do so. In fact, one LEC has reserved an N11 code for an over-the-phone yellow pages service. Thus, it is unlikely that any decision to ban

the use of N11 codes for enhanced services would, in practice, apply to LECs. At the same time, past behavior makes it evident that LECs will resist and delay the availability of alternative abbreviated dialing arrangements. Consequently, a decision not to require the availability of N11 codes will give LECs a new advantage in the information services marketplace.

Proposed alternatives to N11 codes simply do not meet the need. Those that are now available are ill-suited to interactive services, are not available everywhere or are intended for nationwide, not local use. At the same time, none of the presently-available alternatives is as easy to use as N11 because all involve at least a seven-digit number. Other proposed alternatives, including *XXX, will not be available in the foreseeable future. None of the proposed future alternatives has advanced beyond the beginning discussion phases in standard-setting bodies, and these alternatives are years from being generally available. As a result, there is no near term alternative that meets the needs of local information services providers as well as N11 codes.

There also is no reason to adopt any of the alternative uses of N11 codes proposed by various parties. The most fundamental flaw of these proposals is that there is no particular reason to use N11 codes, rather than other numbers, for these purposes. Most of the proposed uses of N11 codes also would take years to develop, by which time other approaches could be made available. In particular, N11 codes will not be needed as area codes because the implementation of interchangeable NPAs will end the current area code shortage. The Commission also should give little weight to current non-standard LEC uses of N11 codes, most of which are only for the convenience of the LEC and many of which are inconsistent with the North American Numbering Plan.

Finally, the Commission should direct LECs to make N11 codes available on a first-come, first-served basis. Specifying an assignment method will speed the process of assigning N11 codes and help to avoid litigation against LECs by disappointed parties. First-come, first-served assignment is reasonable and non-discriminatory, as shown in Cox's Comments and acknowledged by the Commission in the Notice.

Therefore, the Commission should affirm its tentative conclusions and direct LECs to make N11 codes available to information services providers. The availability of N11 codes will strengthen the information services industry. No substitute will meet the need as effectively and there is no reason to adopt any of the proposed alternative uses of N11 codes. For all of these reasons, Cox Enterprises, Inc. urges the Commission to adopt rules directing the assignment of N11 codes as described herein.

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REPLY COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, hereby submits its reply comments on the Commission's Notice of Proposed Rulemaking (the "Notice") in the above-referenced matter.^{1/} The record in this proceeding establishes the utility of N11 codes and the feasibility of their assignment. Claims to the contrary are unfounded. The public interest therefore would be served by affirming the Commission's tentative conclusion that telephone companies should make N11 codes available to information services providers and adopting rules directing local exchange carriers ("LECs") to assign N11 codes on a first-come, first-served basis.

I. INTRODUCTION

The comments in this proceeding are revealing, principally in that they demonstrate telephone companies' antipathy to providing a service that would benefit both consumers and telephone companies' competitors in the information services industry. Other key facts in the record demonstrate the

^{1/} In the Matter of The Use of N11 Codes and Other Abbreviated Dialing Arrangements, 7 FCC Rcd 3004 (1992).

importance of prompt Commission action explicitly directing telephone companies to make N11 codes available to information services providers:

- N11 codes can be extremely useful to information services providers.
- Many telephone companies already are using or planning to use N11 codes for their own enhanced services. One company was bold enough to assert an N11 code should not be made available to others because it planned to use that code for its own electronic yellow pages service.
- Meaningful alternatives to N11 codes will not be available for several years, even assuming swift action by telephone companies to implement alternatives.

Thus, the only way to prevent telephone companies from monopolizing the significant public benefits of N11 codes is to make those codes available to independent information services providers today. Any other conclusion to this proceeding will create a significant competitive disadvantage for independent enhanced services providers while removing any incentive for telephone companies to meet the legitimate need for simplified access to other parties' information services.

For that reason, Cox believes it is imperative that the Commission explicitly rule that N11 codes must be made available to information services providers upon request. The barriers to such a policy concocted by some parties are illusory and proposed "alternatives" to N11 codes simply do not meet the need. Thus, N11 codes should be made available as proposed in the Notice, and

the Commission should specify that N11 codes are to be assigned on a first-come, first-served basis.^{2/}

II. THE AVAILABILITY OF N11 CODES TO INFORMATION SERVICES PROVIDERS WILL BE BENEFICIAL TO THE INFORMATION SERVICES INDUSTRY AND TO CONSUMERS.

The most important principle the Commission should acknowledge in this proceeding is that the availability of N11 codes will benefit both the information services industry and consumers. The availability of N11 codes will produce significant public benefits in the form of new services, and the potential "dangers" of N11 codes that some parties hypothesize are illusory. Thus, the Commission should exercise its plenary authority over numbering and direct telephone companies to make N11 codes available.

A. Use of N11 Codes Will Be Beneficial.

The comments and common sense establish the benefits of making N11 codes available. The demonstrated interest of a variety of potential users, the value of N11-based services to consumers and the Commission's own policies favoring vigorous competition in information services all favor the introduction of N11 codes beyond the single class of users, i.e. LECs, that now enjoy their benefits.

^{2/} These reply comments respond to specific issues raised by the comments of other parties. Cox continues to support the positions expressed in its own comments, filed on June 5, 1992. In particular, Cox's opposition to any involvement by the current North American Numbering Plan Administration in decisions regarding N11 assignments remains unchanged.

The value of N11 codes to potential subscribers is evident from the interest of information services providers and others in their use.^{3/} In addition to Cox, several other commenters expressed interest in N11 codes for their own use. See, e.g., Comments of Alternative Weekly Newspapers at 4-6, Comments of LO/AD Communications. Although LEC predictions of N11 subscriber interest are overblown,^{4/} LEC commenters also reported that they had received requests for N11 service following BellSouth's public announcement of its intention to offer N11 service in Georgia. There can be little doubt that a variety of information services providers will find good ways to use N11 codes.

N11-based information services will have a significant positive impact on consumers as well. N11 will give consumers access to new and innovative information services that might not otherwise be available. N11 codes will make it easier for consumers to reach and use these services without

3/ For convenience, the term "N11 subscribers" will be used to refer to information services providers or others who purchase N11 service from telephone companies.

4/ The LECs attempt to convince the Commission that they will be overwhelmed by parties desiring service. Closer analysis of their comments reveals that the LECs have not made their case. For instance, Bell Atlantic reports receiving eight requests, Comments of the Bell Atlantic Companies ("Bell Atlantic") at 2, and Ameritech reports receiving eleven requests. Comments of the Ameritech Operating Companies ("Ameritech") at 2, n.2. Both Bell Atlantic's and Ameritech's totals are for their entire regions, comprising six states and the District of Columbia and five states, respectively. While some requests may cover large areas, many, including Cox's request in Ameritech territory, are for single cities. In this context, the number of requests Bell Atlantic and Ameritech have received cannot be considered overwhelming. The demand for N11 codes likely will be further reduced when the substantial costs of obtaining service from LECs become known to potential users. See Part II(B), infra.

concerns about presubscription or pre-existing relationships with information services providers. Consumer convenience will enhance the viability of independent information services providers, putting them closer to an equal footing with LECs and spurring competition. Of course, enhancing competition in information services markets is a long-standing Commission goal because the Commission recognizes the societal benefits that accrue from vigorous competition.^{5/} See Computer III Remand Proceedings, 6 FCC Rcd 7571, 7623-24.

Finally, it is reasonable to assume that the availability of N11 codes will increase interest in other abbreviated dialing arrangements like *XXX. While it is unlikely that these other arrangements can be made available in the near future, see Part IV(B), infra, the benefits of N11 codes are likely to hasten efforts to make them available. The more convenient and memorable ways there

^{5/} Some commenters, principally LECs, ignore the public benefits described above and claim that assignment of N11 codes will benefit only a few "private" interests at the expense of the current "public" uses of N11 codes. See, e.g., Comments of the NYNEX Telephone Companies ("NYNEX") at 6. In reality, the assignment of N11 codes will significantly benefit consumers and competition, both of which are public interest values. At the same time, the assignment of N11 codes for local use will provide literally hundreds of opportunities across the country for entrepreneurs to use the codes. Moreover, as discussed in Part V, infra, most of the uses of N11 that LECs describe as "public" are merely for the convenience of the LEC and can be accommodated easily via other available arrangements. Other LEC uses actually benefit the LEC's private interests since they use their N11 codes to promote their enhanced or other unregulated services. While the Information Industry Association ("IIA") takes a position similar to that of the LECs, Comments of IIA at 2-3, it is noteworthy that the IIA's principal support comes from Bell Operating Companies. IIA's membership includes IXC and LEC enhanced service providers, but few local independent providers.

are to obtain access to information services, the more likely the industry is to thrive.

B. There Is No Substance to Claims of Potential Harm.

Against these substantial benefits, some parties claim supposed potential harms arising from the use of N11 codes. They argue that assignment of N11 codes will cause customer confusion, will be expensive for telephone companies and will be anticompetitive. Analysis of these claims shows that they are simply wrong.

1. There Is Little Likelihood of Customer Confusion.

Concern about customer confusion is a red herring. For one thing, these claims are entirely speculative, a fact demonstrated by the commenters' reliance not on evidence but on mere assertions that confusion is likely. See, e.g., Comments of the United States Telephone Association ("USTA") at 7, 32 (stating that "[t]here is no question but that" customer confusion is likely). Closer review of this issue reveals there is little to fear.

The confidence of the parties asserting that customer confusion will occur is clearly misplaced. Telephone users are unlikely to dial newly-assigned N11 numbers unless they intend to do so, undoubtedly in response to advertising

by the new N11 subscriber.^{6/} Moreover, the N11 subscriber will have a significant incentive to prevent customer confusion, because the burden of mistakes is most likely to fall on the information services provider, not on the consumer. After all, the standard practice of most billing agents, including LECs, IXC's and credit card companies, is to remove charges for pay-per-call services if a customer complains, and the N11 subscriber will be charged for any call, mistaken or not, made to its number.

Finally, there has been little confusion resulting from the introduction of interchangeable central office codes (that is, codes like 507, with a 1 or 0 as the middle digit). This is an important indicator because the introduction of interchangeable central office codes, with unfamiliar three-digit

^{6/} The National Telephone Cooperative Association ("NTCA") asserts that customers mis-dialing 911 on a touch tone phone could accidentally reach information services providers operating on 511, 611 and 811. Comments of NTCA at 3. While this is theoretically true, people also mis-dial today, and the results of mis-dialing are at least as confusing as they would be if information services providers were using those numbers. For instance, in northern Virginia, dialing 511 and 611 results in an intercept message informing the caller that the number is not in service and dialing 811 results in a single busy tone, followed by silence. In fact, according to C&P Telephone directory assistance, a caller who forgets that 911 is the emergency code in Washington, D.C. and calls 411 will not be connected to the police but will be directed to dial 911. Thus, it is unlikely that a caller who accidentally dialed an information services provider instead of 911 would be any worse off than a caller who accidentally dialed 411, 511, 611 or 811 today.

sequences at the start of seven-digit numbers, is closely analogous to the introduction of new N11 codes to the public.^{7/}

2. Other Purported Concerns Are Without Substance.

Although parties averse to the introduction of N11 codes raise customer confusion as their most frequent objection, some parties raise other objections, notably that introduction of N11 codes will be costly and that the assignment of N11 codes will give some information services providers an unfair advantage.

There is no question that the introduction of N11 codes will create some costs. The USTA and some other commenters suggest that these costs are a reason not to direct telephone companies to make the codes available. See Comments of USTA at 25, Comments of Southwestern Bell Telephone Company

^{7/} The comments of Pacific Bell and Nevada Bell ("PacTel") assert that customers will be confused by non-uniform assignments of N11 codes, e.g. to a stock information line in one area and to a classified advertising service in another. Comments of PacTel at 13. Of course, that is no different than having different 976 providers on the same number in neighboring areas and is less confusing than two businesses sharing the same seven-digit number in two adjacent area codes in the local calling area of Los Angeles or New York City. PacTel does not appear to have any objections to those arrangements. Centel makes a similar assertion, pinning its claim on possible confusion about changes in the use of 411, 611 and 811 from place to place. Comments of Central Telephone Company ("Centel") at 2-3. As the various comments in this proceeding establish, the uses of 411, 611 and 811 actually are far from uniform, and even 411 is not ubiquitous. See Comments of U S West Communications, Inc. ("U S West") at 17.

("Southwestern Bell") at 5-6.^{9/} Of course, under the principles that govern both federal and state telephone regulation in the United States, N11 subscribers, not LECs, would be required to bear the costs of the service. For instance, the proposed Southern Bell N11 tariff in Georgia imposes a nonrecurring charge of \$85,000 on each N11 subscriber in the Atlanta area, an amount apparently intended to recover the costs of reprogramming switches in the local calling area.^{9/} There is no reason to deviate from this general principle of imposing costs on the parties that create them.^{10/} Thus, the costs of implementing N11 codes

8/ Southwestern Bell's concerns are related to its belief that assignment of N11 codes would somehow lead to the assignment of other NXX codes for abbreviated dialing as well. *Id.* This concern is completely unfounded. The Notice contemplates the assignment of the six N11 codes and nothing else. Regardless of any "economic pressures" that Southwestern Bell fears, it is unlikely the Commission would adopt rules that would require completely retooling the entire numbering system in a way that probably is impossible for at least a decade. In fact, it seems possible that the current telephone network might be incapable of being programmed to recognize non-N11 NXX codes for abbreviated dialing.

9/ Cox has not had an opportunity to evaluate any cost support data for this charge, or any of the other charges proposed by Southern Bell in its Georgia N11 tariff. Of course, consistent with ratemaking principles followed by this Commission and state commissions nationwide, pricing for N11 service should be cost-based, and not based on perceived market demand or "value" to the subscriber.

10/ The substantial costs of obtaining an N11 code are likely to reduce demand for the codes. Under the Georgia tariff, an N11 subscriber in Atlanta would be required to pay 10 cents per call received, plus two cents a minute after the end of an initial five minute period, with a minimum charge of \$10,000 a month, in addition to the \$85,000 nonrecurring charge. This means the minimum cost of providing N11 service in the first year in the Atlanta area alone would be more than \$200,000. Any party that imagined it could obtain N11 service for the price of a business line will be discouraged from ordering such a service by costs at this level.

would not be borne by LECs or by ratepayers generally. In fact, ratepayers will benefit to the extent that N11 subscribers contribute to the rate base.

Alleged concerns about information services monopolization by users of N11 codes are equally unfounded. See Comments of Information Technology Association of America ("TTAA") at 4-5. For one thing, the telephone industry now monopolizes the market for N11 codes. See Part III, infra. Greater availability of N11 codes will reduce the level of monopolization in the market for these codes. Equally important, there will be four to six N11 codes available, making it impossible for one N11 subscriber to monopolize the market. It also seems likely that the availability of N11 codes will spur development of other forms of abbreviated dialing. See Part II(A), supra.^{11/}

Thus, the drawbacks to N11 assignment feared by some parties are illusory. In any event, the potential benefits of directing LECs to assign N11 codes far outweigh any risk that has been identified in this proceeding. Consequently, the Commission should adopt rules directing LECs to assign N11 codes.

^{11/} In addition, pay telephone providers express concern that they could be adversely affected by assignment of N11 codes, most notably if they are required to carry calls without obtaining any of the revenue. Comments of American Public Communications Council at 3. This is a legitimate concern, but is easily addressed either through blocking or through agreements with N11 providers. Cox notes that the Southern Bell's Georgia N11 tariff provides that N11 calls from pay telephones will be blocked. Compensation to pay telephone providers also could be mandated. See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, 6 FCC Rcd 4736, 4745 (1991) (determining to prescribe compensation for 10XXX calls).

C. The Commission Has the Authority to Direct the Availability of N11 Codes.

The Commission clearly has the authority to direct LECs to assign N11 codes. While some parties try to find potential jurisdictional conflicts, the fact remains that the Commission has plenary authority over numbering issues and that this authority is properly exercised here.

The basic claim of parties concerned about the Commission's authority is that N11 codes are different from other numbers because they are somehow intrastate in nature. See Comments of NTCA at 5-9. What NTCA and other like-minded commenters fail to grasp is that the numbering system is necessarily a unified whole and that numbering decisions in one part of the country necessarily affect the rest of the country. This principle led the Commission to determine that it had plenary jurisdiction over numbering.^{12/} For instance, the Commission asserted jurisdiction over cellular NXX codes not only because they can be used for interstate calls but because state regulation "could affect interstate communications by disrupting the uniformity of the North American Numbering Plan." The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 4 FCC Rcd 2369 (1989) ("Cellular Interconnection Reconsideration Order").

^{12/} This principle also is recognized by the telephone industry generally through its compilation of the North American Numbering Plan and its consideration of issues like NXX code assignment and the future of the Numbering Plan on a consolidated, not state-by-state, basis.

For that matter, there is no reason to think that use of N11 codes will be limited to intrastate services. Absent assertion of plenary authority by the Commission, carriers could be placed in the position of having to respond to conflicting state and federal requirements.

Consequently, the Commission should use its plenary authority over numbering to direct LECs to make N11 codes available and, as described in Part VI, *infra*, specify that they must be assigned on a first-come, first-served basis. Uniform numbering policy is vital and, as shown above, the availability of N11 codes will serve the public interest.

III. ABSENT COMMISSION ACTION, TELEPHONE COMPANIES WILL CONTINUE TO MONOPOLIZE ABBREVIATED DIALING ARRANGEMENTS.

If there were any doubt that the availability of N11 codes would benefit the public, it would be removed by the plans of the telephone companies. Telephone companies across the country not only have plans to use N11 codes to provide enhanced services, but in some cases have begun to do so. Telephone company actions also demonstrate that, unless the Commission expressly directs them to do otherwise, the telephone companies will act to maintain their monopoly on abbreviated dialing arrangements.

A. Telephone Companies Already Use and Plan to Use N11 Codes for Enhanced Services.

Unsurprisingly, telephone companies are reluctant to characterize their current and intended uses of N11 codes as "enhanced" because doing so

would undermine their claims that N11 codes should be reserved for self-defined "public" services. The fact remains, nevertheless, that telephone companies already are using N11 codes to provide enhanced services and other unregulated services and have plans to expand those uses. Thus, a decision to limit the non-LEC use of N11 codes will leave the LECs with a monopoly on enhanced services provided through N11 codes.

The existing and proposed uses of N11 codes by LECs are widespread and include services ranging from providing zip codes to full-fledged electronic yellow pages. The services that have been announced or put into service include: (1) call completion from directory assistance^{13/}; (2) zip codes^{14/}; (3) hours of operation, cross streets and other business-related information for callers asking about businesses that pay for special listings^{15/}; and (4) over-the-phone yellow pages service using N11 codes.^{16/} In addition, some telephone

^{13/} See "Telephony," Comm. Daily, Dec. 17, 1991, at 3 (Southern New England Telephone requests authority to provide call completion service); "Telephony," Comm. Daily, Aug. 1, 1991 at 6 (NYNEX purchasing equipment to permit call completion).

^{14/} See "Directory Assistance Hike Remanded," State Telephone Reg. Rep., Jan. 16, 1992, p.11 (describing approval of call completion service offered in Texas by Southwestern Bell); "NYNEX Unveils 'Electronic Yellow Pages'; Pacific Bell Plans Three New Info Services," Telecommunications Reports, Feb. 24, 1992, p.11 (describing PacTel's proposed enhanced directory assistance service).

^{15/} Id.

^{16/} See Mary Lu Carnevale, "Information, Please," Wall St. J., May 18, 1992, at R19 and Mary Lu Carnevale, "More Queries Are Getting Quicker Replies as '411' Business Undergoes Big Changes," Wall St. J., Apr. 6, 1992, at B1, B9 (describing Southwestern Bell's proposed operator-assisted yellow pages service);

(continued...)

companies already use 811 and 611 to provide customer service for unregulated services like inside wire maintenance and equipment repair.

While LECs deny they have any plans to use N11 codes for enhanced services, the facts belie their claims.^{17/} Zip codes, hours of operation and cross streets, let alone an over-the-phone yellow pages service, are not mere "adjuncts" to basic service. None of these services is necessary to the functions of the telephone network or to callers' use of their telephones. See North American Telecommunications Association, 101 FCC 2d 349, 360 (1985), recon. 3 FCC Rcd 4385 (1988) (adjunct to basic services "facilitat[e] establishment of a transmission path over which a telephone call may be completed"). They do, however, provide a LEC with a memorable, unparalleled, abbreviated way for customers to obtain the enhanced services the LEC provides.

Only one LEC is forthright enough to admit that it intends to provide enhanced services through N11 numbers. PRTC states that it has reserved 711 for a yellow pages services, starting in 1993. Ironically, PRTC

^{16/} (...continued)

Comments of Puerto Rico Telephone Company ("PRTC") at 2 (describing reservation of 711 for "access to enhanced Yellow Page operator services").

^{17/} Bell Atlantic, for instance, states that it "does not plan to have customers reach any of its enhanced services by dialing 411," even though it already provides call completion. Comments of Bell Atlantic at 3, n.4. PacTel, while not denying its intention to offer expanded 411 service, states that it "has no current intention of using 411 or expanded 411 for anything other than basic or adjunct to basic services." Comments of PacTel at 4. It is unclear how hours of information and cross street information qualify as basic or adjunct to basic services. See also Comments of Southern New England Telephone ("SNET") at 4 (N11 codes should be used "for their traditional purposes").

argues that its intended use of an N11 code for this enhanced service justifies preventing unaffiliated information services providers from obtaining their own N11 codes. Comments of PRTC at 2-3. While only PRTC makes this argument so bluntly, other LECs' claims that N11 codes should be reserved for "telephone company services" are equally transparent.

Even a Commission ruling that no one could use N11 codes for enhanced or other unregulated services would not prevent LECs from taking advantage of their existing control over N11 codes. As a practical matter, many already are providing exactly the kinds of services that would be subject to any restrictions. It is difficult to imagine that the Commission would not permit LECs to continue to provide existing services to consumers. It also is likely that LECs, desiring to offer other services that are "logical extensions" of their existing 411 franchises, e.g. yellow pages services, would seek and obtain Commission permission for "experiments" and waivers.^{18/} In the end, any restriction on the use of N11 codes would prevent entry into the market by non-LEC competitors but would not, in practice, apply to LECs.

^{18/} For instance, LECs could argue that using 411 facilities and personnel to provide over-the-phone yellow pages service would be consistent with the Commission's Computer III policies permitting integration of enhanced and basic service operations. LECs certainly would claim that there would be efficiencies from such integration and probably would argue that customer confusion would result if the yellow pages service were separated from traditional directory assistance.

This might be ideal for LECs, but it hardly would serve the public interest. Robust competition in enhanced services will come only when the Commission requires LECs to make the basic network facilities and features necessary for those services available to information services providers. A LEC monopoly on N11 codes would be one more advantage, on top of the myriad advantages LECs already have, in the enhanced services marketplace. On the other hand, making N11 codes available even to a handful of independent entities would help to spur the growth of enhanced services industries.^{19/} Making N11 codes available also might spur LECs into designing and implementing other abbreviated dialing arrangements, something many of them seem reluctant to do.

B. Telephone Company Use of N11 Codes Is Part of a Pattern of Monopolistic Behavior.

LEC comments in this proceeding make it clear that they have no intention of doing anything to speed the availability of *XXX, NNX# or any other abbreviated dialing arrangement. This approach is completely consistent with other LEC behavior that, either by design or neglect of the public interest,

^{19/} As noted in Section II(B), *supra*, the ITAA opposes the availability of N11 codes for fear that those who obtain them will obtain an insuperable advantage in the information services market. Comments of ITAA at 6. Cox submits that a more significant danger is posed by the possibility that only LECs will have access to N11 codes, shutting out all competitors. The principles of free and open competition that underlie the antitrust laws are not advanced by limiting the provision of services to one provider. Plainly, even a second, and much more a third, fourth or fifth, provider advances antitrust objectives more than does a policy that prevents additional competition. In addition, the assignment of N11 codes is likely to hasten the availability of other abbreviated dialing arrangements like *XXX, which will address ITAA's concerns as well.

has made many useful telephone services and facilities unavailable to the public. Absent Commission action, it is unrealistic to expect LECs to do anything but hoard telephone resources for their own benefit.

For instance, vertical services codes in the form *XX were made available for LEC use on the network without meaningful notice to other parties, and additional assignments of *XX codes appear to be made in the same way. As of this writing, only 12 of the potential 100 *XX codes remain available for assignment, with many "reserved" for unspecified future uses.^{20/} While *XX codes are used for activating and deactivating telephone network services, there is no inherent reason that they could not have been used for abbreviated dialing. The LECs implementing them simply chose not to do so, and also chose not to seek regulatory approval before making this fundamental decision about network operations.

It is easy to see how similar results could occur for *XXX or any other proposed abbreviated dialing arrangement. Several commenters are on record as saying that using * or # numbers for abbreviated dialing is inappropriate, and even that *XXX codes already are reserved for network functions and therefore are unavailable for abbreviated dialing. See Comments of PacTel at 13-14. Even those commenters who do not completely oppose the use of other abbreviated dialing arrangements generally acknowledge that their

^{20/} Exhibit 1 is a copy of a list of assignments for *XX codes, which was provided to Cox by Bellcore on July 9, 1992. Approximately 40 of the codes are "reserved," either for use in the *XXX format or for unspecified purposes.

implementation is at best years away. See, e.g., Comments of NYNEX at 8.^{21/} In other words, the availability of non-N11 abbreviated dialing is uncertain, far off and wholly in the control of LECs who have no incentive to provide those arrangements promptly.

In similar situations in the past, LECs have demonstrated that they will act on incentives to delay service to their competitors. For example, the Commission was forced to order LECs to provide adequate interconnection to non-wireline cellular carriers, even though that obligation already had been imposed in the original cellular rules. See Cellular Interconnection Reconsideration Order, 4 FCC Rcd at 2370. Even after that order, cellular carriers have not been provided with NXX codes on an equitable basis, a situation that prompted the Commission, more than a year ago, to request Bellcore to develop standards for assigning NXX codes.^{22/} Of course, LECs have no business incentive to cooperate with independent cellular carriers, which explains their reluctance to be responsive to cellular carriers' needs and desires.

21/ While NYNEX acknowledges the possibility of using *XXX codes for access to information services, it generally opposes doing so. NYNEX's views on this issue are particularly interesting in light of the use of the code *526 (*JAM) for traffic information on NYNEX's cellular system in the New York City area. This would appear to be an example not of "customer access to service features such as call forwarding and call waiting," Comments of NYNEX at 8, but rather of access to an information service.

22/ See Letter of Richard Firestone, Chief, Common Carrier Bureau, FCC, to Thomas A. Saunders, Vice President, Operations Technology, Bellcore, June 21, 1991. The reason for the Commission's inquiry was that there were no uniform procedures for assigning NXX codes. Bellcore's efforts to define such procedures have generated enough controversy that it has yet to produce final guidelines.

The same pattern can be seen in enhanced services as well. For instance, in the mid-1980s voice messaging providers in Georgia requested that Southern Bell make call forwarding busy/don't answer available so they could better serve their customers. Southern Bell did not implement this feature until it began offering MemoryCall, its own voice messaging service. See Computer III Remand Order, 6 FCC Rcd at 7623, n.211.

There is no reason to expect anything but continued delay and obfuscation if the Commission does not unambiguously direct LECs to make N11 codes available to independent information services providers. The status quo permits the LECs to exploit the unique advantages of N11 codes for commercial advantage at their competitors' expense. They have no incentive to make other abbreviated dialing arrangements available, and LECs have a history of acting in their own interest rather than advancing the public interest in the wide availability of new and valuable services. Thus, the Commission should recognize the dangers to competition and the public interest posed by inaction and direct LECs to make N11 codes available to independent information services providers.

IV. MEANINGFUL ALTERNATIVES TO N11 CODES WILL NOT BE AVAILABLE FOR SEVERAL YEARS.

Parties opposing the assignment of N11 codes suggest a variety of potential substitutes, claiming that the substitutes meet the needs of local information services providers as well as N11 codes. These claims are wrong. Without exception, these "alternatives" either do not provide the same convenience and utility as N11 codes or will not be available for many years.